

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of Qwest Corporation for)	WC 02-77
)	
Declaratory Ruling Clarifying that the Wholesale)	
DSL Services Qwest Provides to MSN Are Not)	
"Retail" Services Subject to Resale Under)	
Section 251(c)(4) of the Act)	

**REPLY COMMENTS OF NEW EDGE NETWORK, INC.
D/B/A NEW EDGE NETWORKS**

New Edge Network, Inc. ("New Edge Networks")¹ respectfully submits these reply comments in response to Qwest's Petition for Declaratory Ruling ("Petition") requesting that the Federal Communications Commission ("Commission") clarify that certain services provided by Qwest to an unaffiliated Internet service provider ("ISP") are provided on a wholesale basis. As such, these wholesale services would fall outside the scope of the resale pricing obligations pursuant to section 251(c)(4) and 252(d)(3) of the 1996 Telecommunications Act ("96 Act").

In its initial comments, New Edge Networks encouraged the Commission to take Qwest's discriminatory actions into consideration as it addresses this particular Petition and, more importantly, as it develops a new regulatory

¹ New Edge Networks provides digital subscriber line ("DSL") and enhanced data communications nationally in small and midsize cities where populations generally range from 5,000 to 250,000. The company's DSL service is available in more than 360 small and midsize cities in 29 states. New Edge Networks also owns and operates a national data communications network with 18 regional hubs and almost 600 nodes, making it one of the largest asynchronous transfer mode ("ATM") networks in the United States.

New Edge Networks provides competitive DSL, ATM and frame relay services through a combination of its own facilities (multi-service platform switches collocated in central offices), unbundled network elements, tariffed services and resale. As such, New Edge Networks is dependent upon the resale and unbundling obligations contained in the 96 Act to deliver competitive advanced services to retail and wholesale customers.

framework for the delivery of broadband services over incumbent local exchange carrier facilities. In these reply comments, New Edge Networks would like to draw the Commission's attention to certain comments filed by WorldCom in this proceeding.

In their comments, both WorldCom and AT&T raised a number of issues regarding Qwest's compliance with the AOL Bulk Services Order² and the Qwest Teaming Order.³ While the issues pertaining to these two orders are important, and certainly relevant to this proceeding, New Edge Networks believes that the Commission should also address WorldCom's statement that the Internet access service that Qwest is selling its end user customers appears to include an InterLATA "backbone" component.⁴

New Edge Networks is in agreement with WorldCom's statement based on New Edge Networks' understanding of how DSL traffic is typically routed between Qwest and the typical ISP.⁵ First, Internet traffic sent by an end user using Qwest's DSL service is transmitted from the end user's premises to Qwest's DSLAM located in the central office serving the end user. Next, the traffic is routed from Qwest's DSLAM to Qwest's ATM network where the traffic is routed to a specific Qwest ATM port purchased by the ISP. Traffic is then routed from the ATM port to the ISP. The connectivity between the ATM port and the ISP can be provided using Qwest's ATM Optical Access Links or Private Line Transport Services, or through another carrier. Once the ISP receives the traffic, it then routes the traffic to the Internet. Because most ISPs don't have a physical presence in every LATA they serve, they will typically purchase services from an interexchange carrier to route the traffic across LATA boundaries to their facilities. From there the ISP aggregates the traffic and then hands it off to the Internet.

² Deployment of Wireline Services Offering Advanced Telecommunications Capability, Second Report and Order, 14 FCC Rcd 19237 (1999) ("AOL Bulk Services Order").

³ AT&T Corporation et al. v. Ameritech Corporation, Memorandum Opinion and Order, 13 FCC Rcd 21438 (1998) ("Qwest Teaming Order").

⁴ WorldCom Comments, WC Docket 02-77, pg. 3.

⁵ It is clear from this proceeding that Qwest does not treat MSN as a typical ISP.

According to Qwest, MSN is purchasing DSL services pursuant to Qwest's FCC tariff and a number of additional agreements for services not covered by the tariff including marketing, billing, and collection services.⁶ Qwest also states that the additional agreements between Qwest and MSN do not alter the basic relationship between Qwest and MSN established under the federal tariff.⁷ If that is the case, MSN is required to purchase an ATM port from Qwest in all LATAs where MSN serves end users using Qwest's DSL Service.⁸ MSN would then aggregate the traffic and route it to the Internet just as any other ISP purchasing DSL services from Qwest. New Edge Networks believes, however, that MSN has not established an ATM port in every LATA and that Qwest is aggregating the traffic on behalf of MSN and routing it across LATA boundaries for connectivity to the Internet.

The Commission could easily verify whether or not WorldCom's and New Edge Networks' assertions are correct. First, the Commission should review the aforementioned agreements between Qwest and MSN to determine whether or not the network connectivity arrangements are addressed. Second, the Commission should require that Qwest provide a copy of all access service requests ("ASR") submitted by MSN for ATM ports. If MSN is actually purchasing DSL services pursuant to Qwest's federal tariff, as Qwest contends, then Qwest will have a copy of an ASR from MSN for every LATA where Qwest provides DSL service. This would quickly verify that Qwest has submitted accurate information in its Petition regarding its relationship with MSN and also dispel WorldCom's and New Edge Networks' assertions that Qwest is violating its interLATA restrictions by providing interLATA backbone services.

In conclusion, New Edge Networks believes that Qwest's Petition has opened itself up for examination regarding its relationship with MSN. Qwest filed this Petition in an effort to preempt a state commission from investigating its relationship with MSN. Unfortunately for Qwest, this Petition has exposed its discriminatory and potentially unlawful behavior. The Commission has the

⁶ Qwest Petition and Affidavit of Vice President Steven K. Starliper, para. 10.

⁷ Affidavit of Vice President Steven K. Starliper, para. 12.

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obligation to investigate these issues as part of this Petition and should proceed accordingly. New Edge Networks is confident that further investigation by the Commission will confirm that Qwest is providing MSN with discriminatory and unlawful service.

Respectfully Submitted,

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⁸ Qwest FCC Tariff No. 1., Section 8.4.4.A.2.